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County of San Diego
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11
12 RAYMOND ESPINOSA, individually, and
13 on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 vs.

16 ALLIANCE HEALTHCARE SERVICES,
17 INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE
18 HEALTHCARE RADIOLOGY, a
Delaware corporation; ALLIANCE
19 ONCOLOGY, LLC, a Delaware limited
liability company; and DOES 1 through 10,
20 inclusive,

21 Defendants.

Case No.: 37-2020-00011228-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
(2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
(3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
(4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
(5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
(6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
(7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
(8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day of Rest in Seven);
(9) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay)
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Raymond Espinosa, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this
24 county, and employed Plaintiff this county, and thus a substantial portion of the transactions
25 and occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Raymond Espinosa is a resident of San Diego, in San Diego County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt MRI Technician

1 from approximately 2006 to September 2019. Plaintiff worked for Defendants at various
2 Kaiser Permanente locations, such as San Gabriel, Los Alamitos, and San Diego, California.
3 During his employment, Plaintiff typically worked nine (9) hours or more per day, five (5) to
4 six (6) days per week, from 8:00 a.m. to 5:00 p.m. Plaintiff's primary job duties included,
5 without limitation, coordinating MRI patient arrivals and departures, evaluating MRI images
6 and ensuring images were of diagnostic quality for interpretation, cleaning the MRI unit in
7 between each patient and at the end of every shift, and coordinating the cleaning and removal
8 of medical waste.

9 5. ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO
10 BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY was and is,
11 upon information and belief, a Delaware corporation, and at all times hereinafter mentioned,
12 an employer whose employees are engaged throughout this county, the State of California, or
13 the various states of the United States of America.

14 6. ALLIANCE ONCOLOGY, LLC was and is, upon information and belief, a
15 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
16 are engaged throughout this county, the State of California, or the various states of the United
17 States of America.

18 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
19 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
20 amend the complaint and serve such fictitiously named Defendants once their names and
21 capacities become known.

22 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 were the partners, agents, owners, or managers of ALLIANCE HEALTHCARE SERVICES,
24 INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE
25 RADIOLOGY and ALLIANCE ONCOLOGY, LLC at all relevant times.

26 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, ALLIANCE
28 HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS

1 ALLIANCE HEALTHCARE RADIOLOGY; ALLIANCE ONCOLOGY, LLC; and/or DOES
2 1 through 10 (collectively, “Defendants” or “ALLIANCE HEALTHCARE”), each acting as
3 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
4 other co-Defendants and was acting within the course and scope of such agency, employment,
5 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
6 of any and all Defendants were in accordance with, and represent, the official policy of
7 Defendants.

8 10. At all relevant times, Defendants, and each of them, ratified each and every act
9 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all the other Defendants in proximately causing
11 the damages herein alleged.

12 11. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, ALLIANCE
17 HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
18 ALLIANCE HEALTHCARE RADIOLOGY; ALLIANCE ONCOLOGY, LLC; and/or DOES
19 1 through 10 (collectively, “Defendants” or “ALLIANCE HEALTHCARE”), each acting as
20 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
21 other co-Defendants and was acting within the course and scope of such agency, employment,
22 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
23 of any and all Defendants were in accordance with, and represent, the official policy of
24 Defendants.

25 13. At all relevant times, Defendants, and each of them, ratified each and every act
26 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
27 and abetted the acts and omissions of each and all the other Defendants in proximately causing
28 the damages herein alleged.

1 14. Plaintiff is informed and believes, and thereon alleges, that each of said
2 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
3 omissions, occurrences, and transactions alleged herein.

4 15. Under California law, Defendants are jointly and severally liable as employers
5 for the violations alleged herein because they have each exercised sufficient control over the
6 wages, hours, working conditions, and employment status of Plaintiff and class members.
7 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
8 controlled their work schedule and/or conditions of employment, determined their rate of pay,
9 and maintained their employment records. Defendants suffered or permitted Plaintiff and
10 class members to work and/or “engaged” Plaintiff and class members so as to create a
11 common-law employment relationship. As joint employers of Plaintiff and class members,
12 Defendants are jointly and severally liable for the civil penalties and all other relief available
13 to Plaintiff and class members under the law.

14 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
15 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
16 members because Defendants have:

- 17 (a) jointly exercised meaningful control over the work performed by
18 Plaintiff and class members;
- 19 (b) jointly exercised meaningful control over Plaintiff’s and class members’
20 wages, hours, and working conditions, including the quantity, quality
21 standards, speed, scheduling, and operative details of the tasks
22 performed by Plaintiff and class members;
- 23 (c) jointly required that Plaintiff and class members perform work which is
24 an integral part of Defendants’ businesses; and
- 25 (d) jointly exercised control over Plaintiff and class members as a matter of
26 economic reality in that Plaintiff and class members were dependent on
27 Defendants, who shared the power to set the wages of Plaintiff and class
28 members and determined their working conditions, and who jointly

1 reaped the benefits from the underpayment of their wages and
2 noncompliance with other statutory provisions governing their
3 employment.

4 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
5 there has existed a unity of interest and ownership between Defendants such that any
6 individuality and separateness between the entities has ceased.

7 18. ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO
8 BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY; ALLIANCE
9 ONCOLOGY, LLC; and DOES 1 through 10 are therefore alter egos of each other.

10 19. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name ALLIANCE
13 HEALTHCARE.

14 20. Plaintiff further alleges, upon information and belief, that Defendants
15 ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN
16 CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE
17 ONCOLOGY, LLC are alter egos of each other for the following reasons:

- 18 (a) On the California Secretary of State's website
19 (<https://businesssearch.sos.ca.gov/>), ALLIANCE HEALTHCARE
20 SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA
21 AS ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE
22 ONCOLOGY, LLC share the same entity address and mailing address,
23 "18201 VON KARMAN AVE., SUITE 600, IRVINE, CA 92612."
24 (b) According to their most recent "Statement of Information" forms filed
25 with the California Secretary of State, ALLIANCE HEALTHCARE
26 SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA
27 AS ALLIANCE HEALTHCARE RADIOLOGY is listed as the
28 managing entity of ALLIANCE ONCOLOGY, LLC;

1 (c) On information and belief, ALLIANCE HEALTHCARE SERVICES,
2 INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
3 ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE
4 ONCOLOGY, LLC share the same agent for service of process, “C T
5 CORPORATION SYSTEM (CO168406);” and

6 (d) On information and belief, ALLIANCE HEALTHCARE SERVICES,
7 INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
8 ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE
9 ONCOLOGY, LLC utilize the same standardized employment forms
10 and issue the same employment policies.

11 **GENERAL ALLEGATIONS**

12 21. Defendants are a national provider of outsourced radiology, oncology, and
13 interventional medical services catering to hospitals, health systems, and physician practices.
14 Defendants reportedly serve over 1,100 hospitals and other healthcare partners in 46 states.
15 Upon information and belief, Defendants maintain a single, centralized Human Resources
16 (“HR”) department at their company headquarters in Irvine, California, which is responsible
17 for the recruiting and hiring of new employees, and communicating and implementing
18 Defendants’ company-wide policies, including timekeeping policies and meal and rest period
19 policies, to employees throughout California.

20 22. In particular, Plaintiff and class members, on information and belief, received
21 the same standardized documents and/or written policies. Upon information and belief, the
22 usage of standardized documents and/or written policies, including new-hire documents,
23 indicate that Defendants dictated policies at the corporate level and implemented them
24 company-wide, regardless of their employees’ assigned locations or positions.

25 23. Upon information and belief, Defendants maintain a centralized Payroll
26 department at their company headquarters in Irvine, California, which processes payroll for all
27 non-exempt, hourly paid employees working for Defendants at their various locations and
28 jobsites in California, including Plaintiff and class members. Based upon information and

1 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
2 employees in California, irrespective of their work locations. Upon information and belief,
3 Defendants process payroll for departing employees in the same manner throughout the State
4 of California, regardless of the manner in which each employee's employment ends.

5 24. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
9 and advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
12 members were not paid for all hours worked because all hours worked were not recorded.

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive certain wages for
15 overtime compensation and that they were not receiving certain wages for overtime
16 compensation.

17 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to be paid at a regular rate
19 of pay, and corresponding overtime rate of pay, that included as eligible income all
20 remuneration required by law, including but not limited to, all income derived from shift
21 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive at least minimum
24 wages for compensation and that they were not receiving at least minimum wages for work
25 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
26 and class members were not paid at least minimum wages for work done off-the-clock.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to meal periods in

1 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
2 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
3 periods and that Plaintiff and class members were not provided with all meal periods or
4 payment of one (1) additional hour of pay at their regular rates of pay when they did not
5 receive a timely, uninterrupted, thirty (30) minute meal period.

6 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to rest periods in
8 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not authorized and
10 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
11 and class members were not authorized and permitted to take compliant rest periods, nor did
12 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
13 pay at their regular rates of pay when they were not authorized and permitted to take a
14 compliant rest period.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive complete and
17 accurate wage statements in accordance with California law. In violation of the California
18 Labor Code, Plaintiff and class members were not provided complete and accurate wage
19 statements.

20 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete payroll records in
22 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
23 and intentionally failed to do so.

24 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of all
26 wages earned upon termination of employment. In violation of the California Labor Code,
27 Plaintiff and class members did not receive payment of all wages due, including, but not
28 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting

1 time pay, within permissible time periods.

2 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of wages
4 during their employment. In violation of the California Labor Code, Plaintiff and class
5 members did not receive payment of all wages, including, but not limited to, overtime wages,
6 minimum wages, meal and rest period premiums, and/or reporting time pay, within
7 permissible time periods.

8 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
10 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
11 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

12 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to one day's rest in seven.
14 In violation of the California Labor Code, Defendants required Plaintiff and class members to
15 work more than six consecutive days without a day of rest, where the total hours worked
16 exceeded 30 hours in any week or six hours in any one day thereof.

17 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive all reporting time
19 pay when Defendants required Plaintiff and class members were required to report to work but
20 were put to work for less than half of their regular scheduled shift. In violation of the
21 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

22 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 Plaintiff and/or class members with written notice of the material terms of their employment
2 with Defendants as required by the California Wage Theft Prevention Act, but willfully,
3 knowingly, and intentionally failed to do so.

4 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate
6 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
7 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
8 falsely represented to Plaintiff and class members that they were properly denied wages, all in
9 order to increase Defendants' profits.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 42. At all times herein set forth, PAGA provides that any provision of law under
12 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
13 assessed and collected by the LWDA for violations of the California Labor Code and
14 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
15 civil action brought on behalf of themselves and other current or former employees pursuant
16 to procedures outlined in California Labor Code section 2699.3.

17 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
18 person who was employed by the alleged violator and against whom one or more of the
19 alleged violations was committed."

20 44. Plaintiff and other current and former employees of Defendants are "aggrieved
21 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
22 or former employees and one or more of the alleged violations were committed against them.

23 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
24 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
25 following requirements have been met:

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing with the LWDA and by certified mail to the employer of
28 the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall notify the employer and the aggrieved employee or
7 representative by certified mail that it does not intend to investigate the
8 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
9 the postmark date of the aggrieved employee's notice. Upon receipt of
10 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
11 (65) calendar days of the postmark date of the aggrieved employee's
12 notice, the aggrieved employee may commence a civil action pursuant
13 to California Labor Code section 2699 to recover civil penalties.

14 46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
15 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
16 provision other than those listed in Section 2699.5 after the following requirements have been
17 met:

18 (a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated (other than those listed in Section 2699.5), including the
22 facts and theories to support the alleged violation.

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or
2 representative and by online filing with the LWDA if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the aggrieved employee may
6 commence a civil action pursuant to Section 2699.

7 47. On March 17, 2020, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-778719-20. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

15 48. As of the filing date of this complaint, over 65 days have passed since Plaintiff
16 sent the notice described above to the LWDA, and the LWDA has not responded that it
17 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

18 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
21 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

22 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid" Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

51. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

52. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

54. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

55. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

56. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

57. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

58. Members of the Class and Subclass are referred to herein as “class members.”

1 59. Plaintiff reserves the right to redefine the Class and Subclass and to add
2 additional subclasses as appropriate based on further investigation, discovery, and specific
3 theories of liability.

4 60. There are common questions of law and fact as to class members that
5 predominate over questions affecting only individual members, including, but not limited to:

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty
8 (40) hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to properly calculate the “regular rate” of
11 pay on which Plaintiff’s and class members’ overtime rate of pay was
12 based;
- 13 (c) Whether Defendants failed to pay Plaintiff and class members at least
14 minimum wages for all hours worked;
- 15 (d) Whether Defendants failed to provide Plaintiff and class members with
16 meal periods;
- 17 (e) Whether Defendants failed to authorize and permit Plaintiff and class
18 members to take rest periods;
- 19 (f) Whether Defendants provided Plaintiff and class members with
20 complete and accurate wage statements as required by California Labor
21 Code section 226(a);
- 22 (g) Whether Defendants maintained accurate payroll records as required by
23 California Labor Code section 1174(d);
- 24 (h) Whether Defendants failed to pay earned overtime wages, minimum
25 wages, meal and rest period premiums, and reporting time pay due to
26 Plaintiff and class members upon their discharge;
- 27 (i) Whether Defendants failed timely to pay overtime wages, minimum
28 wages, meal and rest period premiums, and reporting time pay to

1 Plaintiff and class members during their employment;

2 (j) Whether Defendants failed to pay Plaintiff and class members for the
3 costs of mandatory physical examinations and/or drug testing;

4 (k) Whether Defendants failed to provide Plaintiff and class members one
5 day's rest in seven;

6 (l) Whether Defendants required Plaintiff and class members to report to
7 work, but failed to provide them with work or provided them with less
8 than half their scheduled day's work, without properly compensating
9 them as required by California Code of Regulations, Title 8, section
10 11050, subsection 5;

11 (m) Whether Defendants failed to reimburse Plaintiff and class members for
12 necessary and required business-related expenditures and/or losses
13 incurred by them in the scope of their employment;

14 (n) Whether Defendants failed to provide written notice of information
15 material to Plaintiff's and/or class members' employment with
16 Defendants;

17 (o) Whether Defendants engaged in unlawful and unfair business practices
18 in violation of California Business & Professions Code sections 17200,
19 *et seq.*; and

20 (p) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants' violations of California law.

22 61. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

63. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

64. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

65. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

66. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

67. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 68. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
8 class members were not paid overtime premiums for all of the hours they worked in excess of
9 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
10 hours in a week, because all hours worked were not recorded.

11 69. First, during the relevant time period, Defendants had a company-wide "on-
12 call" policy, whereby they scheduled Plaintiff and class members to work "on-call" shifts.
13 During an "on-call" shift, Plaintiff and class members had to be available and report to work
14 within 30 minutes of receiving a call from Defendants notifying them that they needed to
15 work. When scheduled to be "on-call," Plaintiff and class members were in essence on
16 controlled standby for Defendants because they could not use that time freely for their own
17 purposes and were forced to put their lives on hold. When assigned an "on-call" shift,
18 Plaintiff refrained from making plans because he knew that he had to drop whatever he was
19 doing at a moment's notice if he received a call from Defendants to report to work. For
20 example, Plaintiff refrained from recreational activities and traveling long distances when he
21 was "on-call," because he had to ensure he could get ready and arrive to the hospital within
22 Defendants' requisite 30-minute time frame. Defendants paid Plaintiff and class members a
23 reduced rate of \$5.00 per hour for working an "on-call" shift. However, Defendants failed to
24 fully pay Plaintiff and class members for the time during which they were waiting to receive a
25 call from Defendants and unable to use their time for their own purposes.

26 70. Second, during the relevant time period, Defendants had company-wide
27 policies and/or practices of often staffing only one employee per worksite, which resulted in
28 Plaintiff and class members working during unpaid meal periods. Because Defendants

1 understaffed their assignments and utilized a single-staffing model for some of their
2 worksites, there was no one available to relieve Plaintiff and class members for meal periods.
3 Defendants' uniform adoption of a single-staffing model for their business required Plaintiff
4 and class members to remain on-duty, including during meal periods; thus, there was no one
5 available to provide meal period coverage to employees. As a result, Plaintiff and class
6 members were forced to remain on-duty and work during their unpaid meal periods, handling
7 patient examinations and other work-related tasks. At all relevant times, Defendants knew or
8 should have known that their single-staffing model required Plaintiff and class members to
9 perform their assigned duties during unpaid meal periods.

10 71. Third, during the relevant time period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of understaffing their worksites, while assigning heavy
12 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal
13 period coverage. As a result of this lack of meal period coverage, Plaintiff and class members
14 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
15 entitled to receive a meal period. For example, Plaintiff and class members were required to
16 perform their duties, such as attending to patients, cleaning the machines and facilities as
17 needed, and receiving assignments from Defendants' supervisors, during unpaid meal periods,
18 or would have their meal periods interrupted to complete such work-related tasks. Thus,
19 Plaintiff and class members missed or had meal periods interrupted in order to complete their
20 assigned workloads. Defendants did not pay Plaintiff and class members for the time they
21 continued to perform tasks during meal periods.

22 72. Fourth, Defendants, on a company-wide basis, had a practice of failing to
23 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
24 their duties for compliant meal periods. As a result of these policies and/or practices, Plaintiff
25 and class members were required to work through and/or to return early from meal periods, in
26 order to complete their assigned tasks. Further, on information and belief, because
27 Defendants frowned upon employees accruing meal period penalties, Defendants pressured
28 Plaintiff and class members to clock out for meal periods and/or adjusted employee time

1 records to reflect compliant meal periods, regardless of whether they had received a compliant
2 meal period or not, in order to strictly limit meal penalties that Defendants would otherwise
3 owe. Thus, Plaintiff and class members performed work during meal periods for which they
4 were not paid.

5 73. Fifth, during the relevant period, Defendants had, and continue to have, a
6 company-wide policy and/or practice of requiring employees to complete work-related tasks
7 while off-the-clock. For example, prior to clocking in at the start of his scheduled shift or
8 after clocking out at the end of his shift, Plaintiff would also receive phone calls and
9 notifications on his personal cellular phone from his supervisors regarding upcoming
10 assignments and important industry updates and guidelines. Additionally, Defendants
11 required Plaintiff and class members to complete online training modules from home but did
12 not compensate them for their actual hours spent completing them. Instead, Defendants'
13 management came up with arbitrary time limitations for completing the modules and only
14 paid Plaintiff and class members for the time Defendants believed it should take to the
15 complete the requisite training, rather than the actual time Plaintiff and class members spent
16 completing the training. For example, Plaintiff spent approximately 9.5 hours completing
17 Defendants' requisite online training modules, but was not paid for all of his time. Thus,
18 Defendants failed to correctly track this time spent working outside of their scheduled shifts,
19 and Plaintiff and class members received no compensation for this time.

20 74. Defendants knew or should have known that as a result of these company-wide
21 practices and/or policies, Plaintiff and class members were performing assigned duties during
22 their meal periods and performing work off-the-clock, and were suffered or permitted to
23 perform work for which they were not paid. Because Plaintiff and class members worked
24 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
25 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members
26 were not paid overtime wages for all of the overtime hours they actually worked.

27 75. Furthermore, Defendants did not pay Plaintiff and class members the correct
28 overtime rate for the recorded overtime hours that they generated. In addition to an hourly

1 wage, Defendants paid Plaintiff and class members shift differential pay, incentive pay,
2 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
3 California Labor Code, Defendants failed to incorporate all compensation, including but not
4 limited to, all incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
5 into the calculation of the regular rate of pay for purposes of calculating the overtime wage
6 rate. Therefore, during times when Plaintiff and class members worked overtime and received
7 these other forms of pay, Defendants failed to pay all overtime wages by paying a lower
8 overtime rate than required.

9 76. Specifically, Defendants paid Plaintiff and class members nondiscretionary
10 bonuses or incentive pay for receiving recognition from other employees and achieving
11 perfect attendance. On information and belief, this nondiscretionary bonus and/or incentive
12 pay was listed on Plaintiff's and class members' wage statements as "Rewards & Recog,"
13 "Bonus Misc," and "Perf. Att. Awar." During pay periods that Plaintiff and class members
14 were paid overtime and double time wages, Defendants failed to incorporate the
15 nondiscretionary bonus and/or incentive pay into Plaintiff's and class members' regular rate of
16 pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked.
17 Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay
18 instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
19 overtime and double time rates of pay based on all remuneration paid has resulted in an
20 underpayment of overtime and double time wages to Plaintiff and class members on a
21 company-wide basis.

22 77. Defendants' failure to pay Plaintiff and class members the balance of overtime
23 compensation as required by California law, violates the provisions of California Labor Code
24 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
25 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
26 and attorneys' fees.

27 //

28 //

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

80. As set forth above, Defendants systematically, and on a company-wide basis, required Plaintiff and class members to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Plaintiff and class members were subject to Defendants’ control during an “on-call” shift, Defendants did not pay Plaintiff and class members at least minimum wages for all hours that they were suffered or permitted to work. And, as stated above, due to Defendants’ policy and/or practice of single-staffing and/or understaffing while assigning heavy workloads and failing to adhere to a schedule of meal periods, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated, Plaintiff and class members were required to work off-the-clock outside of their scheduled shifts to complete assigned job duties and online training modules, time for which they were not fully paid.

81. Further, Defendants maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and using their own personal vehicles to undergo mandatory physical examinations, tuberculin (TB) testing, and/or

1 drug testing, including obtaining flu shots, upon hiring and periodically thereafter. At all
2 times, Defendants were in control of scheduling the date and time for the testing and/or
3 physical examinations, selecting the provider or clinic where the testing and/or physical
4 examinations were to take place, and determining the scope of the testing and/or physical
5 examinations. For example, Defendants gave Plaintiff strict instructions to obtain annual flu
6 shots and TB tests, and Plaintiff underwent the examination and testing for the sole benefit of
7 Defendants. Each time, Plaintiff followed Defendants' instructions and traveled several miles
8 to and from the medical clinics authorized by Defendants, and spent several hours waiting at
9 the medical clinic and undergoing the requisite treatment and/or testing. However,
10 Defendants did not compensate Plaintiff and class members for the time they spent traveling
11 to and undergoing the mandatory physical examinations, TB testing, and/or drug testing.

12 82. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
13 and class members worked through that qualified for overtime premium payment. To the
14 extent that these off-the-clock hours did not qualify for overtime premium payment,
15 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
16 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

17 83. Defendants' failure to pay Plaintiff and class members minimum wages violates
18 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
19 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

21 **THIRD CAUSE OF ACTION**

22 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

23 **Violations**

24 **(Against all Defendants)**

25 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
6 2012).

7 86. At all relevant times herein set forth, California Labor Code sections 226.7,
8 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
9 meal period mandated by an applicable order of the IWC.

10 87. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
11 the applicable IWC Wage Order also require employers to provide a second meal period of
12 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
13 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
14 hours worked is no more than twelve (12) hours, the second meal period may be waived by
15 mutual consent of the employer and the employee only if the first meal period was not waived.
16 The applicable IWC Wage Order further provides that employees in the health care industry
17 who work shifts in excess of eight (8) hours in a workday may waive one of their two meal
18 periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, §
19 11050(11)(D).

20 88. First, during the relevant period, as stated, Defendants had company-wide
21 policies and/or practices of often staffing only one employee per location, which resulted in
22 Plaintiff and class members working during unpaid meal periods or taking their meal periods
23 late. Because Defendants utilized a single-staffing model and/or understaffed their worksites,
24 there was no one available to relieve Plaintiff and class members needing meal period
25 coverage. Defendants' uniform adoption of a single-staffing model for their business required
26 Plaintiff and class members to remain on-duty, including during meal periods; thus, there was
27 no one available to provide meal period coverage to employees. As a result, Plaintiff and
28 class members were forced to remain on-duty and work during their unpaid meal periods,

1 handling patient examinations. At all relevant times, Defendants knew or should have known
2 that their single-staffing model required Plaintiff and class members to perform their assigned
3 duties during unpaid meal periods.

4 89. Second, during the relevant period, as stated, Defendants had, and continue to
5 have, a company-wide policy and/or practice of understaffing while assigning heavy
6 workloads. Additionally, Defendants, on a company-wide basis, had a practice of failing to
7 adhere to a schedule of meal periods, which further caused Plaintiff and class members to not
8 be relieved of their duties for compliant meal periods. As a result, Plaintiff and class members
9 had their meal periods cut short and/or took them late.

10 90. Defendants' practice of single-staffing and/or understaffing, coupled with
11 Defendants' practice of assigning heavy workloads, and failure to adhere to a schedule of
12 meal periods, prevented Plaintiff and class members from taking all compliant meal periods to
13 which they were entitled. As a result, Plaintiff and class members would be forced to work in
14 excess of five (5) hours before taking a meal period and, at times, had their meal periods
15 interrupted and/or had to forgo their meal periods altogether. For example, during his
16 employment, Plaintiff would start his meal periods late due to the heavy workload and lack of
17 coverage, would have his meal periods interrupted by his supervisors wanting to discuss
18 work-related matters, and would have his meal periods cut short due to inadequate time built
19 in between patients' appointments and inadequate time to prepare for patients requiring
20 additional assistance.

21 91. Third, on information and belief, because Defendants frowned upon employees
22 accruing meal period penalties, Defendants' management would adjust Plaintiff's and class
23 members' time records and/or pressured employees to clock out for meal periods to reflect
24 compliant meal periods, regardless of whether they had received a compliant meal period or
25 not, in order to strictly limit meal penalties that would need to be paid by Defendants.
26 However, Plaintiff and class members worked through meal periods or had their meal periods
27 interrupted, because there were not enough employees on duty to handle the workload.

28 92. Fourth, during the relevant time period, Plaintiff and class members worked

1 shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal
2 period. For example, Plaintiff missed his second meal period when he worked shifts in excess
3 of ten (10) hours.

4 93. Plaintiff and class members did not sign valid meal period waivers on days that
5 they were entitled to meal periods and were not relieved of all duties. Defendants did not
6 present Plaintiff and class members with the opportunity to voluntarily choose whether to
7 waive their first or second 30-minute meal period on any given day. Instead, Defendants had
8 a company-wide policy of requiring all newly hired employees to sign blanket meal period
9 waivers at or near their time of hire. For example, Plaintiff signed Defendants' blanket "Meal
10 Break Waiver" and "Meal Break Waiver (shifts of 6 hours or less)" forms near the time he
11 was hired on September 7, 2006. Because Defendants took the position that non-exempt,
12 hourly paid employees had waived their rights to one for their two meal periods for the
13 entirety of their employment, Defendants did not provide them with all meal periods to which
14 they were entitled.

15 94. Defendants' company-wide use of blanket meal period waivers signed at or
16 near the time of hire and imposition of the burden on employees to revoke the waivers in
17 writing, discouraged and impeded Plaintiff and class members from taking all meal periods to
18 which they were entitled. And, Defendants' presumption that second meal periods would not
19 be provided for shifts in excess of ten (10) hours due to blanket second meal period waivers
20 discouraged Plaintiff and class members from taking second meal periods.

21 95. At all times herein mentioned, Defendants knew or should have known that, as
22 a result of these policies, Plaintiff and class members were prevented from being relieved of
23 all duties and required to perform some of their assigned duties during meal periods.
24 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
25 members meal period premium wages when meal periods were late, interrupted, shortened, or
26 missed, because Defendants adjusted employee time records to reflect compliant meal periods,
27 even if none were taken.

28 96. Moreover, Defendants engaged in a company-wide practice and/or policy of

1 not paying all meal period premiums owed when compliant meal periods are not provided.
2 Because of Defendants’ practices and/or policies, Plaintiff and class members have not
3 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
4 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
5 interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct
6 rate of pay for premium wages because Defendants systematically failed to include all forms
7 of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses,
8 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants failed
9 to provide Plaintiff and class members compliant meal periods in violation of California Labor
10 Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

11 97. Defendants’ conduct violates the applicable IWC Wage Order, and California
12 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
13 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
14 rate of compensation for each work day that the meal period was not provided.

15 **FOURTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 17 **(Against all Defendants)**

18 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 99. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
22 members’ employment by Defendants.

23 100. At all relevant times, the applicable IWC Wage Order provides that “[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period” and that the “rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof” unless the total daily work time is less than three and one-half
28 (3½) hours.

1 101. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest
4 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break time, and
6 relieve their employees of all duties — including the obligation that an employee remain on
7 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
8 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
9 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
10 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
11 that a required rest period was not authorized and permitted.

12 102. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
14 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
15 practices, including assigning heavy workloads and single-staffing/understaffing their
16 worksites, prevented Plaintiff and class members from being relieved of all duty to take their
17 rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with
18 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class
19 members not being authorized and permitted to take compliant rest periods.

20 103. Furthermore, upon information and belief, during the relevant time period,
21 Defendants maintained implemented a company-wide on-premises rest period policy, which
22 mandated that Plaintiff and class members remain on the work premises during their rest
23 periods. Upon information and belief, Defendants’ company-wide on-premises rest period
24 policy prevented Plaintiff and class members from being relieved of all duties for rest periods
25 and caused them to perform work during rest periods.

26 104. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

1 during his employment, Plaintiff missed his rest periods or had them cut short or interrupted,
2 due to Defendants' policy of assigning heavy workloads and failing to provide sufficient
3 coverage. Plaintiff also took his rest periods late due to Defendants' understaffing and lack of
4 rest period coverage.

5 105. Defendants have also engaged in a systematic, company-wide practice and/or
6 policy of not paying rest period premiums owed when rest periods are not authorized and
7 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members
8 one (1) additional hour of premium pay for missed rest periods, Defendants did not pay
9 Plaintiff and class members at the correct rate of pay for premium wages because Defendants
10 failed to include all forms of compensation, such as shift differential pay, incentive pay,
11 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
12 result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest
13 period premium wages due, in violation of Labor Code section 226.7, 516, and the applicable
14 IWC Wage Order.

15 106. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

24 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 108. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 109. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name
7 of the legal entity of the actual employer; and all applicable hourly rates in effect during the
8 pay period, including overtime rates of pay, and the corresponding number of hours worked at
9 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
10 and 226(a)(9).

11 110. Because Defendants did not record the time Plaintiff and Subclass members
12 spent working off the clock and deducted time from Plaintiff's and Subclass members' records
13 for meal periods that were interrupted and/or missed (and therefore time for which they should
14 have been paid), Defendants did not list the correct amount of gross wages and net wages
15 earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5).
16 For the same reason, Defendants failed to accurately list the total number of hours worked by
17 Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the
18 applicable hourly rates of pay in effect during the pay period and corresponding accurate
19 number of work hours worked at each hourly rate in violation of section 226(a)(9).

20 111. The wage statement deficiencies also include, without limitation, failing to list
21 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
22 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
23 only the last four digits of his or her social security number or an employee identification
24 number other than a social security number; failing to list the name and address of the legal
25 entity that is the employer; failing to list the inclusive dates of the period for which class
26 members were paid; and/or failing to state all hours worked as a result of not recording or
27 stating hours worked off-the-clock.

28 112. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
8 and meal period start and stop times for Plaintiff and Subclass members, in violation of
9 section 1198. As stated, on information and belief, Defendants engaged in a company-wide
10 practice and/or policy of falsifying Plaintiff’s and Subclass members’ time records by
11 recording that compliant meal periods were taken regardless of if or when meal periods were
12 actually taken, and thereby failed to keep accurate records of meal start and end times for
13 Plaintiff and Subclass members. Furthermore, in light of Defendants’ failure to provide
14 Plaintiff and Subclass members with second 30-minute meal periods to which they were
15 entitled, Defendants kept no records of meal start and end times for second meal periods.

16 113. California Labor Code section 1174(d) provides that “[e]very person employing
17 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or establishments . .
22 . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
23 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
24 showing the daily hours they worked and the wages paid thereto as a result of failing to record
25 the off-the-clock hours that they worked.

26 114. Plaintiff and Subclass members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants’ failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per

1 employee.

2 **SIXTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

4 **Upon Termination**

5 **(Against all Defendants)**

6 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 116. This cause of action is dependent upon, and wholly derivative of, the overtime
9 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that
10 were not timely paid to Plaintiff and those class members no longer employed by Defendants
11 upon their termination.

12 117. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
13 that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
15 her employment, his or her wages shall become due and payable not later than seventy-two
16 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting.

19 118. Defendants willfully failed to pay Plaintiff and class members who are no
20 longer employed by Defendants the earned and unpaid wages set forth above, including but
21 not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or
22 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
23 leaving Defendants' employ.

24 119. Defendants' failure to pay Plaintiff and class members who are no longer
25 employed by Defendants their wages earned and unpaid at the time of discharge, or within
26 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
27 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
28 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a

thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

121. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, that were not timely paid to Plaintiff and those class members by Defendants during their employment.

122. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

123. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

124. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

125. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages due including, but not limited to, overtime wages, minimum wages,
2 meal and rest period premium wages, and/or reporting time pay, within the time periods
3 specified by California Labor Code section 204.

4 126. Defendants' failure to pay Plaintiff and class members all wages due violates
5 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
6 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's**
9 **Rest in Seven**
10 **(Against all Defendants)**

11 127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 128. At all relevant times herein, California Labor Code section 551 provides that
14 every person employed in any occupation of labor is entitled to one day's rest in seven.
15 Additionally, California Labor Code section 552 prohibits employers from requiring
16 employees to work more than six consecutive days without a day of rest.

17 129. At all relevant times herein set forth, California Labor Code section 556
18 exempts an employer from the day-of-rest requirement when the total hours worked by an
19 employee do not exceed 30 hours in any week or six hours in any one day thereof.

20 130. Labor Code section 558(a) provides "[a]ny employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
24 dollars (\$50) for each underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid wages. . . . (2) For each
26 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
27 period for which the employee was underpaid . . . in addition to an amount sufficient to
28 recover underpaid wages ." Labor Code section 558(c) provides "[t]he civil penalties

provided for in this section are in addition to any other civil or criminal penalty provided by law.”

131. During the relevant time period, Defendants sometimes scheduled Plaintiff and class members to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. For example, Plaintiff was scheduled for seven (7) consecutive days of work from March 11, 2019, through March 21, 2019. Throughout his employment, Plaintiff worked seven (7) consecutive days several times per year. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may have signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

132. Thus, during the relevant time period, and in violation of Labor Code sections 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six days in seven. Plaintiff and class members are therefore entitled to recover civil penalties pursuant to Labor Code section 558.

NINTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay (Against all Defendants)

133. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

134. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

135. The applicable IWC wage order, California Code of Regulations, Title 8,

1 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
2 work and does report, but is not put to work or is furnished less than half said employee’s
3 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
4 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
5 employee’s regular rate of pay, which shall not be less than the minimum wage.”

6 136. During the relevant time period, Defendants violated California Labor Code
7 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
8 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
9 work for their scheduled shift but were put to work for less than half of the regularly
10 scheduled day’s work.

11 137. First, Defendants failed to pay Plaintiff and class members reporting time pay
12 when they presented themselves ready for work by waiting at home during a scheduled “on-
13 call” shift and awaiting instructions on whether to show up at the hospital, but ultimately were
14 not called. Defendants did not pay Plaintiff and class members for at least half of their
15 scheduled day’s work when they were subject to Defendants’ on-call policy and were not
16 called or told not to come into the hospital. For example, during the relevant time period,
17 Plaintiff waited at home during his scheduled “on-call” or “standby” shift as required by
18 Defendants’ on-call policy, but was sometimes not called or told that the hospital did not need
19 him to work. When this occurred, Defendants did not pay him for at least half of his
20 scheduled standby time or the required minimum reporting time pay.

21 138. Second, Defendants had a company-wide practice of sending Plaintiff and class
22 members home early from their shifts, including before they had worked at least half of their
23 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
24 For example, Defendants assigned Plaintiff to a facility which had persistent technological
25 issues for a week during January 2018. Plaintiff would report to work, but would be sent
26 home early by Defendants’ management due to the technological issues which were out of
27 Plaintiff’s control. Although Plaintiff and class members would report to work based on the
28 schedule that Defendants provided to them, Defendants would send them home before they

1 had worked at least half of their scheduled shifts without giving them reporting time pay.

2 139. Accordingly, Plaintiff and class members were not properly compensated with
3 reporting time pay in violation of California Labor Code section 1198.

4 **TENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
6 **(Against all Defendants)**

7 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 141. At all times herein set forth, California Labor Code section 2802 provides that
10 an employer must reimburse employees for all necessary expenditures and losses incurred by
11 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
12 to prevent employers from passing off their cost of doing business and operating expenses on
13 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
14 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
15 equipment are required by the employer or are necessary to the performance of a job, such
16 tools and equipment shall be provided and maintained by the employer, except that an
17 employee whose wages are at least two (2) times the minimum wage provided herein may be
18 required to provide and maintain hand tools and equipment customarily required by the trade
19 or craft.”

20 142. First, during the relevant time period, Defendants had a company-wide policy
21 of requiring Plaintiff and class members to utilize their own personal cellular phones and
22 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
23 of their work-related cellular phone expenses. Plaintiff and class members were required to
24 use their personal cellular phones to complete their work-related tasks, such as discussing
25 upcoming work assignments with Defendants’ managers or reviewing healthcare alerts and
26 updates regarding safety warnings and instructions. Plaintiff would spend 10-15 minutes per
27 instance speaking with his managers/supervisors on his personal cell phone. Although
28 Defendants required Plaintiff and class members to utilize their personal cellular phones to

1 carry out their work-related responsibilities, Defendants failed to fully reimburse them for this
2 cost.

3 143. Second, during the relevant time period, Defendants, on a company-wide basis,
4 required that Plaintiff and class members use their own personal vehicles to carry out
5 company business, such as driving to other work sites, but failed to reimburse them for all of
6 the costs of their work-related vehicle and travel expenses. For example, Plaintiff periodically
7 drove to other Kaiser facilities in Riverside and San Marcos to work a scheduled shift.
8 However, Defendants only reimbursed a portion of his travel expenses, paying a reduced rate
9 of 51 cents per mile instead of at the IRS Standard Mileage Rate¹ of 58 cents (2019), 54.5
10 cents (2018), 53.5 cents (2017), and so forth, or instead of his actual mileage or travel
11 expenses. Although Defendants required Plaintiff and class members to utilize their own
12 vehicles and incur associated costs, Defendants failed to reimburse them fully for these
13 necessary expenses.

14 144. Third, Defendants also had a company-wide policy of requiring Plaintiff and
15 class members to travel in their own personal vehicles to obtain mandatory physical
16 examinations, TB testing, and/or drug testing, including flu shots, but did not reimburse them
17 for their travel expenses, including mileage. For example, Plaintiff followed Defendants'
18 instructions, traveled 5-6 miles roundtrip in his personal vehicle, and underwent Defendants'
19 mandatory flu shots and TB testing, but was not reimbursed for his mileage to and from the
20 medical facilities. Although Defendants required Plaintiff and class members to undergo
21 physical examinations, TB testing, and/or drug testing, Defendants never reimbursed them for
22 all of their travel expenses.

23 145. Fourth, Defendants also had a company-wide policy of requiring Plaintiff and
24 class members to incur the costs of obtaining mandatory flu shots and/or TB tests, but did not
25 fully reimburse them for their resulting co-pays and out of pocket expenses. For example,
26 Plaintiff paid approximately \$60.00 out of pocket to obtain a TB test at CVS in San Diego,
27

28 ¹ See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed March 17, 2020).

1 California. However, Defendants did not fully reimburse Plaintiff for this work-related
2 expense.

3 146. Defendants could have provided Plaintiff and class members with the actual
4 tools for use on the job, such as company phones and company vehicles to be used for
5 fulfilling work-related tasks, or Defendants could have reimbursed employees for the costs of
6 their cellular phone, mileage, travel expenses, and TB testing and/or flu shot expenses.
7 Instead, Defendants passed these operating costs off onto Plaintiff and class members.

8 147. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
10 have intentionally and willfully failed to reimburse Plaintiff and other class members for
11 necessary business-related expenses and costs.

12 148. Plaintiff and class members are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **ELEVENTH CAUSE OF ACTION**

16 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

17 **(Against all Defendants)**

18 149. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 150. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
23 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
24 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
25 penalties for violations of those Labor Code sections not found in section 2699.5, including
26 sections 516, 1182.12, and 2810.5.

27 151. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
2 wage order for Defendants' failure to compensate Plaintiff and other
3 aggrieved employees with all required overtime pay and failure to
4 properly calculate the overtime rates paid to other aggrieved employees,
5 as alleged herein;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
7 and the applicable IWC wage order for Defendants' failure to
8 compensate Plaintiff and other aggrieved employees with at least
9 minimum wages for all hours worked, as alleged herein;
- 10 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
11 applicable IWC wage order for Defendants' failure to provide Plaintiff
12 and other aggrieved employees with meal periods, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
14 IWC wage order for Defendants' failure to authorize and permit
15 Plaintiff and other aggrieved employees to take rest periods, as alleged
16 herein;
- 17 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
18 wage order for failure to provide accurate and complete wage statements
19 to Plaintiff and other aggrieved employees, as alleged herein;
- 20 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
21 IWC wage order for failure to maintain payroll records as alleged
22 herein;
- 23 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
24 earned wages upon termination as alleged herein;
- 25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as alleged herein;
- 27 (i) Violation of Labor Code section 222.5 for failure to compensate
28 Plaintiff and other aggrieved employees for mandatory physical

1 examinations and/or drug testing as set forth below;

2 (j) Violation of Labor Code sections 551 and 552 for failure to provide one
3 day's rest in seven to Plaintiff and other aggrieved employees, as
4 alleged herein;

5 (k) Violation of Labor Code section 1198 and the applicable IWC wage
6 order for failure to pay reporting time pay when Plaintiff and other
7 aggrieved employees were put to work for less than half of their regular
8 scheduled shifts, as alleged herein;

9 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
10 and other aggrieved employees for all business expenses necessarily
11 incurred, as alleged herein; and

12 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
13 provide written notice of information material to other aggrieved
14 employees' employment with Defendants, as set forth below.

15 152. At all relevant times herein, California Labor Code section 222.5 requires
16 employers to pay for the costs an employee incurs for obtaining any medical or physical
17 examination taken.

18 153. At all times relevant herein, Defendants implemented, on a company-wide
19 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
20 mandatory physical examinations, TB testing, and/or drug testing, including flu shots, but
21 required them to do so at their own expense. As stated, Defendants had a company-wide
22 policy requiring that all employees, including Plaintiff and other aggrieved employees, travel
23 to an authorized medical clinic on their own time and using their own personal vehicles to
24 undergo physical examinations, TB testing, and/or drug testing. At all times, Defendants were
25 in control of scheduling the date and time for the examinations and/or testing, selecting the
26 provider/clinic where the examinations and/or testing were to take place, and determining the
27 scope of the examinations and/or testing.

28 154. During the relevant time period, Plaintiff was instructed by Defendants to travel

1 to Defendants' designated medical facility and obtain annual TB testing and flu shots.
2 Plaintiff followed Defendants' instructions, traveled to the medical facility authorized by
3 Defendants, and underwent the flu shot and TB testing. Plaintiff was required to travel to and
4 from the medical facilities selected by Defendants using his own vehicle. Plaintiff followed
5 Defendants' instructions and drove 5-6 miles roundtrip to and from the medical facilities
6 designated by Defendants, and then spent 1-2 hours waiting at the medical facilities and
7 undergoing the requisite treatment and testing.

8 155. However, Defendants did not compensate Plaintiff and other aggrieved
9 employees for the time they spent traveling to and from the medical facilities, for the time
10 they spent undergoing the physical examinations, TB testing, and/or drug testing, including
11 flu shots, or reimburse them for the travel expenses they incurred getting to and from the
12 medical facilities. Defendants' policy and/or not paying for all costs Plaintiff and other
13 aggrieved employees incurred obtaining mandatory physical examinations, TB testing, and/or
14 drug testing is in violation of California Labor Code section 222.5. Plaintiff and other
15 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
16 sections 2699(a), (f), and (g).

17 156. California's Wage Theft Prevention Act was enacted to ensure that employers
18 provide employees with basic information material to their employment relationship at the
19 time of hiring, and to ensure that employees are given written and timely notice of any
20 changes to basic information material to their employment. Codified at California Labor
21 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
22 employer must provide written notice to employees containing basic and material payroll
23 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
24 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
25 overtime, the regular payday designated by the employer, and any allowances claims as part
26 of the minimum wage, including meal or lodging allowances. Labor Code section
27 2810.5(a)(1)(A)-(C).

28 157. During the relevant time period, Defendants failed to provide other aggrieved

1 employees with written notice that lists all the requisite information set forth in Labor Code
2 section 2810.5(a)(1)(A)-(C). Other aggrieved employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **TWELFTH CAUSE OF ACTION**

5 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

6 **Unlawful Business Practices**

7 **(Against all Defendants)**

8 158. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 159. Defendants are “persons” as defined by California Business & Professions
11 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
12 and/or associations.

13 160. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
14 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
15 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
16 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
17 meaning of Code of Civil Procedure section 1021.5.

18 161. Defendants’ activities, as alleged herein, are violations of California law, and
19 constitute unlawful business acts and practices in violation of California Business &
20 Professions Code sections 17200, *et seq.*

21 162. A violation of California Business & Professions Code sections 17200, *et seq.*
22 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
23 policies and practices have violated state law in at least the following respects:

- 24 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
25 class members, to work overtime without paying them proper
26 compensation in violation of California Labor Code sections 510 and
27 1198 and the applicable IWC Order, and paying Plaintiff and class
28 members overtime at a lower rate than required by law by failing to

properly calculate the regular rate of pay for purposes of overtime, as alleged herein;

- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (g) Failing to pay Plaintiff and class members the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below;
- (h) Failing to provide one day's rest in seven to Plaintiff and class members in violation of California Labor Code sections 551 and 552, as alleged herein;
- (i) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein; and
- (j) Failing to reimburse Plaintiff and class members for all business

1 expenses necessarily incurred in violation of California Labor Code
2 sections 2802, as alleged herein.

3 163. At all relevant times herein, California Labor Code section 222.5 requires
4 employers to pay for the costs an employee incurs for obtaining any medical or physical
5 examination taken.

6 164. At all times relevant herein, Defendants implemented, on a company-wide
7 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
8 physical examinations, TB testing, and/or drug testing, including flu shots, but required them
9 to do so at their own expense. As stated, Defendants had a company-wide policy requiring
10 that all employees, including Plaintiff and class members, travel to an authorized medical
11 clinic on their own time and using their own personal vehicles to undergo physical
12 examinations, TB testing, and/or drug testing. At all times, Defendants were in control of
13 scheduling the date and time for the examinations and/or testing, selecting the provider/clinic
14 where the examinations and/or testing were to take place, and determining the scope of the
15 examinations and/or testing.

16 165. During the relevant time period, Plaintiff was instructed by Defendants to travel
17 to Defendants' designated medical facility and obtain annual TB testing and flu shots.
18 Plaintiff followed Defendants' instructions, traveled to the medical facility authorized by
19 Defendants, and underwent the flu shot and TB testing. Plaintiff was required to travel to and
20 from the medical facilities selected by Defendants using his own vehicle. Plaintiff followed
21 Defendants' instructions and drove 5-6 miles roundtrip to and from the medical facilities
22 designated by Defendants, and then spent 1-2 hours waiting at the medical facilities and
23 undergoing the requisite treatment and testing.

24 166. However, Defendants did not compensate Plaintiff and class members for the
25 time they spent traveling to and from the medical facilities, for the time they spent undergoing
26 the physical examinations, TB testing, and/or drug testing, including flu shots, or reimburse
27 them for the travel expenses they incurred getting to and from the medical facilities.
28 Defendants' policy and/or not paying for all costs Plaintiff and class members incurred

obtaining mandatory physical examinations, TB testing, and/or drug testing is in violation of California Labor Code section 222.5.

167. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

168. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

THIRTEENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

169. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

170. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

171. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

172. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due

1 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
2 compensation guarantee and enhanced enforcement implemented by section 226.7. The
3 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
4 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
5 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
6 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
7 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
8 unfair business practice in violation of California Business & Professions Code sections
9 17200, *et seq.* (Id.)

10 173. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
12 and practices have violated the spirit of California’s meal and rest period laws and constitute
13 acts against the public policy behind these laws.

14 174. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
15 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
16 benefits implemented by section 226.7 withheld and retained by Defendants during a period
17 that commences four years prior to the filing of this complaint; a permanent injunction
18 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
19 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
20 Procedure section 1021.5 and other applicable laws; and an award of costs.

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

24 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
25 against Defendants, jointly and severally, as follows:

26 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
27 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
28 reserves the right to amend his prayer for relief to seek a different amount.

1 **Class Certification**

2 2. That this case be certified as a class action;

3 3. That Plaintiff be appointed as the representative of the Class and Subclass;

4 4. That counsel for Plaintiff be appointed as class counsel.

5 **As to the First Cause of Action**

6 5. That the Court declare, adjudge, and decree that Defendants violated California
7 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
8 pay all overtime wages due to Plaintiff and class members;

9 6. For general unpaid wages at overtime wage rates and such general and special
10 damages as may be appropriate;

11 7. For pre-judgment interest on any unpaid overtime compensation commencing
12 from the date such amounts were due, or as otherwise provided by law;

13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a); and

15 9. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Second Cause of Action**

18 10. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
20 minimum wages to Plaintiff and class members;

21 11. For general unpaid wages and such general and special damages as may be
22 appropriate;

23 12. For pre-judgment interest on any unpaid compensation from the date such
24 amounts were due, or as otherwise provided by law;

25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code section 1194(a);

27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

28 15. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date

such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
9 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
10 during their employment;

11 43. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 44. For statutory penalties according to proof pursuant to California Labor Code
14 section 210;

15 45. For pre-judgment interest on any unpaid wages from the date such amounts
16 were due, or as otherwise provided by law;

17 46. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 47. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Eighth Cause of Action**

22 48. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 551 and 552 by failing to provide a day's rest in seven; and that
24 Defendants committed said violations of the Labor Code against Plaintiff and class members;

25 49. For civil penalties for conduct occurring any time between one year prior to the
26 filing of this complaint and judgment, pursuant to California Labor Code section 558;

27 50. For pre-judgment and post-judgment interest as provided by law; and

28 51. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiff and class members with reporting time pay;

53. For all actual, consequential and incidental losses and damages, according to proof;

54. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and

55. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

56. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

57. For unpaid business-related expenses and such general and special damages as may be appropriate;

58. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

59. For all actual, consequential, and incidental losses and damages, according to proof;

60. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

61. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

62. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of material terms of employment).

63. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

64. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

65. For pre-judgment and post-judgment interest as provided by law; and

66. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

67. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members,

1 failing timely to pay Plaintiff and class members all earned wages during employment, failing
2 to reimburse Plaintiff and class members for the costs of physical examinations and/or drug
3 testing, failing to provide one day's rest in seven, failing to pay Plaintiff and class members
4 reporting time pay, and failing to reimburse Plaintiff and class members for business-related
5 expenses, constitutes an unlawful business practice in violation of California Business and
6 Professions Code sections 17200, *et seq.*;

7 68. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 69. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections 17200
12 *et seq.*;

13 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 71. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Thirteenth Cause of Action**

18 72. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
20 an unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 73. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiff and class members and prejudgment interest from the day such amounts were
24 due and payable;

25 74. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections 17200
28 *et seq.*;

1 75. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

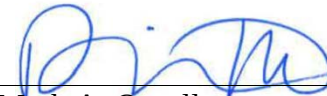
3 76. For pre-judgment and post-judgment interest as provided by law; and

4 77. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: May 26, 2020

Respectfully submitted,

Capstone Law APC

9
10 By:  _____

Mark A. Ozzello

Brandon K. Brouillette

Brooke W. Waldrop

12 Attorneys for Plaintiff Raymond Espinosa
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EXHIBIT 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 17, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Raymond Espinosa v. Alliance Healthcare Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Raymond Espinosa in connection with his claims under the California Labor Code. Mr. Espinosa was an employee of ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY and/or ALLIANCE ONCOLOGY, LLC. For the purpose of this letter, Mr. Espinosa collectively refers to these entities as “ALLIANCE.”

The employer may be contacted directly at the address below:

ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612

ALLIANCE ONCOLOGY, LLC
18201 VON KARMAN AVE., SUITE 600
IRVINE CA 92612

Mr. Espinosa intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Espinosa seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ALLIANCE in California as a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ALLIANCE employed Mr. Espinosa as a non-exempt, hourly paid MRI Technician from approximately 2006 to September 2019. Mr. Espinosa worked for ALLIANCE at various Kaiser Permanente locations, such as San Gabriel, Los Alamitos, and San Diego, California. During his

employment, Mr. Espinosa typically worked nine (9) hours or more per day, five (5) to six (6) days per week, from 8:00 a.m. to 5:00 p.m. Mr. Espinosa's primary job duties included, without limitation, coordinating MRI patient arrivals and departures, evaluating MRI images and ensuring images were of diagnostic quality for interpretation, cleaning the MRI unit in between each patient and at the end of every shift, and coordinating the cleaning and removal of medical waste.

ALLIANCE has committed one or more of the following Labor Code violations against Mr. Espinosa, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

ALLIANCE's Company-Wide and Uniform Payroll and HR Practices

ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY and ALLIANCE ONCOLOGY, LLC are a Delaware corporation and limited liability company, respectively, and together are a national provider of outsourced radiology, oncology, and interventional medical services catering to hospitals, health systems, and physician practices. ALLIANCE serves over 1,100 hospitals and other healthcare partners in 46 states. Upon information and belief, ALLIANCE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for ALLIANCE in California, including Mr. Espinosa and other aggrieved employees. At all relevant times, ALLIANCE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Espinosa and other aggrieved employees, regardless of their location or position.

Upon information and belief, ALLIANCE maintains a centralized Payroll department at its corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for ALLIANCE in California, including Mr. Espinosa and other aggrieved employees. Further, ALLIANCE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Espinosa and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, ALLIANCE utilized the same methods and formulas when calculating wages due to Mr. Espinosa and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required

¹ These facts, theories, and claims are based on Mr. Espinosa's experience and counsel's review of those records currently available relating to Mr. Espinosa's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Espinosa reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ALLIANCE willfully failed to pay all overtime wages owed to Mr. Espinosa and other aggrieved employees. During the relevant time period, Mr. Espinosa and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ALLIANCE had a company-wide "on-call" policy, whereby it scheduled Mr. Espinosa and other aggrieved employees to work "on-call" shifts. During an "on-call" shift, Mr. Espinosa and other aggrieved employees had to be available and report to work within 30 minutes of receiving a call from ALLIANCE notifying them that they needed to work. When scheduled to be "on-call," Mr. Espinosa and other aggrieved employees were in essence on controlled standby for ALLIANCE because they could not use that time freely for their own purposes and were forced to put their lives on hold. When assigned an "on-call" shift, Mr. Espinosa refrained from making plans because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from ALLIANCE to report to work. For example, Mr. Espinosa refrained from recreational activities and traveling long distances when he was "on-call," because he had to ensure he could get ready and arrive to the hospital within ALLIANCE's requisite 30-minute time frame. ALLIANCE paid Mr. Espinosa and other aggrieved employees a reduced rate of \$5.00 per hour for working an "on-call" shift. However, ALLIANCE failed to fully pay Mr. Espinosa and other aggrieved employees for the time during which they were waiting to receive a call from ALLIANCE and unable to use their time for their own purposes.

Second, during the relevant time period, ALLIANCE had company-wide policies and/or practices of often staffing only one employee per worksite, which resulted in Mr. Espinosa and other aggrieved employees working during unpaid meal periods. Because ALLIANCE understaffed its assignments and utilized a single-staffing model for some of its worksites, there was no one available to relieve Mr. Espinosa and other aggrieved employees for meal periods. ALLIANCE's uniform adoption of a single-staffing model for its business required Mr. Espinosa and other aggrieved employees to remain on-duty, including during meal periods; thus, there was no one available to provide meal period coverage to employees. As a result, Mr. Espinosa and other aggrieved employees were forced to remain on-duty and work during their unpaid meal periods, handling patient examinations and other work-related tasks. At all relevant times, ALLIANCE knew or should have known that its single-staffing model required Mr. Espinosa and other aggrieved employees to perform their assigned duties during unpaid meal periods.

Third, ALLIANCE had, and continues to have, a company-wide policy and/or practice of understaffing its worksites, while assigning heavy workloads, resulting in a failure to provide Mr. Espinosa and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Espinosa and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Espinosa and other aggrieved employees were required to perform their duties, such as attending to patients, cleaning the machines and facilities as needed, and receiving assignments from ALLIANCE's supervisors, during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. Thus, Mr. Espinosa and other aggrieved

employees missed or had meal periods interrupted in order to complete their assigned workloads. ALLIANCE did not pay Mr. Espinosa and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, ALLIANCE, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Espinosa and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Espinosa and other aggrieved employees were required to work through and/or to return early from meal periods, in order to complete their assigned tasks. Further, on information and belief, because ALLIANCE frowned upon employees accruing meal period penalties, ALLIANCE pressured Mr. Espinosa and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that ALLIANCE would otherwise owe. Thus, Mr. Espinosa and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, during the relevant period, ALLIANCE had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, prior to clocking in at the start of his scheduled shift or after clocking out at the end of his shift, Mr. Espinosa would also receive phone calls and notifications on his personal cellular phone from his supervisors regarding upcoming assignments and important industry updates and guidelines. Additionally, ALLIANCE required Mr. Espinosa and other aggrieved employees to complete online training modules from home but did not compensate them for their actual hours spent completing them. Instead, ALLIANCE's management came up with arbitrary time limitations for completing the modules and only paid Mr. Espinosa and other aggrieved employees for the time ALLIANCE believed it should take to complete the requisite training, rather than the actual time Mr. Espinosa and other aggrieved employees spent completing the training. For example, Mr. Espinosa spent approximately 9.5 hours completing ALLIANCE's requisite online training modules, but was not paid for all of his time. Thus, ALLIANCE failed to correctly track this time spent working outside of their scheduled shifts, and Mr. Espinosa and other aggrieved employees received no compensation for this time.

ALLIANCE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Espinosa and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. ALLIANCE also knew, or should have known, that it did not compensate Mr. Espinosa and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Espinosa and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Espinosa and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. ALLIANCE's failure to pay Mr. Espinosa and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, ALLIANCE did not pay Mr. Espinosa and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, ALLIANCE paid Mr. Espinosa and other aggrieved employees shift differential pay, incentive pay,

nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ALLIANCE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, ALLIANCE failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, ALLIANCE paid other aggrieved employees nondiscretionary bonuses or incentive pay for receiving recognition from other employees, achieving perfect attendance, and referring other employees to work for ALLIANCE. On information and belief, some of these nondiscretionary bonuses and/or incentive pay was listed on other aggrieved employees' wage statements as "Rewards & Recog," "Bonus Misc," and "Perf. Att. Awar." During pay periods that other aggrieved employees were paid overtime and double time wages, ALLIANCE failed to incorporate the nondiscretionary bonus and/or incentive pay into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ALLIANCE paid other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ALLIANCE's failure to properly calculate the overtime and double time rates of pay based on all remuneration paid has resulted in an underpayment of overtime and double time wages to other aggrieved employees on a company-wide basis.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, during the relevant time period, ALLIANCE systematically, and on a company-wide basis, required Mr. Espinosa and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Espinosa and other aggrieved employees were subject to ALLIANCE's control during an "on-call" shift, ALLIANCE did not pay Mr. Espinosa and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. And, as stated above, due to ALLIANCE's policy and/or practice of single-staffing and/or understaffing while assigning heavy workloads and failing to adhere to a schedule of meal periods, Mr. Espinosa and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated, Mr. Espinosa and other aggrieved employees were required to work off-the-clock outside of their scheduled shifts to complete assigned job duties and online training modules, time for which they were not fully paid.

Moreover, ALLIANCE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory physical examinations, tuberculin (TB) testing, and/or drug testing, including obtaining flu shots, upon hiring and periodically thereafter. At all times, ALLIANCE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, ALLIANCE gave Mr. Espinosa strict instructions to obtain annual flu shots and TB tests, and Mr. Espinosa underwent the examination and testing for the sole benefit of ALLIANCE. Each time, Mr. Espinosa followed ALLIANCE's instructions and traveled several miles to and from the medical clinics authorized by ALLIANCE, and spent several hours waiting at the medical clinic and undergoing the requisite treatment and/or testing. However, ALLIANCE did not compensate Mr. Espinosa and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory physical examinations, TB testing, and/or drug testing.

Thus, ALLIANCE did not pay minimum wages for all hours worked by Mr. Espinosa and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ALLIANCE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, ALLIANCE regularly failed to pay at least minimum wages to Mr. Espinosa and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

First, during the relevant time period, as stated, ALLIANCE had, and continues to have, company-wide policies and/or practices of often staffing only one employee per location, which resulted in Mr. Espinosa and other aggrieved employees working during unpaid meal periods or taking their meal periods late. Because ALLIANCE utilized a single-staffing model and/or understaffed their worksites, there was no one available to relieve Mr. Espinosa and other aggrieved employees needing meal period coverage. ALLIANCE's uniform adoption of a single-staffing model for its business required Mr. Espinosa and other aggrieved employees to remain on-duty, including during meal periods; thus, there was no one available to provide meal period coverage to employees. As a result, Mr. Espinosa and other aggrieved employees were forced to remain on-duty and work during their unpaid meal periods, handling patient examinations. At all relevant times, ALLIANCE knew or should have known that its single-staffing model required Mr. Espinosa and other aggrieved employees to perform their assigned duties during unpaid meal periods.

Second, as stated, ALLIANCE had, on a company-wide basis, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. Additionally, ALLIANCE, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Espinosa and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Espinosa and other aggrieved employees had their meal periods cut short and/or took them late.

ALLIANCE's practice of single-staffing and understaffing, coupled with ALLIANCE's practice of assigning heavy workloads, and failure to adhere to a schedule of meal periods, prevented Mr. Espinosa and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Espinosa and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Espinosa would start his meal periods late due to the heavy workload and lack of meal period coverage, would have his meal periods interrupted by his supervisors wanting to discuss work-related matters, and would have his meal periods cut short due to inadequate time built in between patients' appointments and inadequate time to prepare for patients requiring additional assistance.

Third, on information and belief, because ALLIANCE frowned upon employees accruing meal period penalties, ALLIANCE's management would adjust Mr. Espinosa's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by ALLIANCE. However, Mr. Espinosa and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Fourth, ALLIANCE did not provide Mr. Espinosa and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Espinosa missed his second meal period when he worked shifts in excess of ten (10) hours in one day.

Mr. Espinosa and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. ALLIANCE did not present Mr. Espinosa and other aggrieved employees with the opportunity to voluntarily choose whether to waive their first or second 30-minute meal period on any given day. Instead, ALLIANCE had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers

at or near their time of hire. For example, Mr. Espinosa signed ALLIANCE's blanket "Meal Break Waiver" and "Meal Break Waiver (shifts of 6 hours or less)" forms near the time he was hired on September 7, 2006.

Because ALLIANCE took the position that non-exempt, hourly paid employees had waived their rights to one for their two meal periods for the entirety of their employment, ALLIANCE did not provide them with all meal periods to which they were entitled.

ALLIANCE's company-wide use of blanket meal period waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and impeded Mr. Espinosa and other aggrieved employees from taking all meal periods to which they were entitled. And, ALLIANCE's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours due to blanket second meal period waivers discouraged Mr. Espinosa and other aggrieved employees from taking second meal periods.

As a result of ALLIANCE's practices and/or policies, Mr. Espinosa and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. ALLIANCE knew or should have known that as a result of its policies, Mr. Espinosa and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ALLIANCE further knew or should have known that it did not pay Mr. Espinosa and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted, because ALLIANCE adjusted employee time records to reflect compliant meal periods, even if none were taken.

ALLIANCE also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Espinosa and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that ALLIANCE did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because ALLIANCE did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, ALLIANCE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Espinosa and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time

per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, ALLIANCE regularly failed to authorize and permit Mr. Espinosa and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ALLIANCE’s company-wide practices, including assigning heavy workloads and single-staffing/understaffing its worksites, prevented Mr. Espinosa and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, ALLIANCE failed to schedule rest periods, which, coupled with ALLIANCE’s failure to provide adequate rest period coverage, further led to Mr. Espinosa and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, ALLIANCE maintained and implemented a company-wide practice and/or policy requiring that Mr. Espinosa and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Espinosa and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, ALLIANCE effectively maintained control over Mr. Espinosa and other aggrieved employees during rest periods, and, as a result of this rest period policy, ALLIANCE did not relinquish control over Mr. Espinosa and other aggrieved employees during rest periods.

As a result of ALLIANCE’s practices and policies, Mr. Espinosa and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Espinosa missed his rest periods or had them cut short or interrupted, due to ALLIANCE’s policy of assigning heavy workloads and failing to provide sufficient coverage. Mr. Espinosa also took his rest periods late due to ALLIANCE’s understaffing and lack of rest period coverage.

ALLIANCE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Espinosa and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ALLIANCE did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because ALLIANCE did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, ALLIANCE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Espinosa and other aggrieved employees are therefore entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ALLIANCE has not provided Mr. Espinosa and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ALLIANCE has knowingly and intentionally provided Mr. Espinosa and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ALLIANCE issued uniform wage statements to Mr. Espinosa and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, ALLIANCE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because ALLIANCE did not record the time Mr. Espinosa and other aggrieved employees spent working off-the-clock, ALLIANCE did not list the correct amount of gross wages and net wages earned by Mr. Espinosa and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, ALLIANCE failed to accurately list the total number of the hours worked by Mr. Espinosa and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because ALLIANCE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, ALLIANCE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). ALLIANCE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, ALLIANCE issued uniform wage statements to Mr. Espinosa and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Espinosa's and other aggrieved employees' wage statements incorrectly list the employer as "Alliance HealthCare Services," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity,

“ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY,” is listed on the California Secretary of State’s website with the same address. *See example paystub below.*

AHCS Banking Information:
Bank of America Merrill Lynch
275 Valencia Avenue
Brea, CA 92823



Alliance HealthCare Services 18201 Von Karman Suite 600 Irvine, CA 92612 (844)722-4739						
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Raymond Espinosa	Alliance HealthCare Services		09/02/2019	09/15/2019	09/13/2019	610096

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ALLIANCE willfully failed to maintain accurate payroll records for Mr. Espinosa and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, ALLIANCE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Espinosa and other aggrieved employees. Also, as stated, ALLIANCE engaged in a company-wide practice and/or policy of falsifying Mr. Espinosa’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Espinosa and other aggrieved employees. Furthermore, in light of ALLIANCE’s failure to provide Mr. Espinosa and other aggrieved employees with second 30-

minute meal periods to which they were entitled, ALLIANCE kept no records of meal start and end times for second meal periods.

Because ALLIANCE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Espinosa and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Espinosa and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

ALLIANCE willfully failed to pay Mr. Espinosa and other aggrieved employees who are no longer employed by ALLIANCE all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time

of discharge, or within seventy-two (72) hours of their leaving ALLIANCE's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, ALLIANCE implemented, on a company-wide basis, an employer-imposed requirement that Mr. Espinosa and other aggrieved employees undergo mandatory physical examinations, TB testing, and/or drug testing, but required them to do so at their own expense. As stated, ALLIANCE had a company-wide policy requiring that Mr. Espinosa and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo physical examinations, TB testing, and/or drug testing. At all times, ALLIANCE was in control of scheduling the date and time for the examinations and/or testing, selecting the provider/facility where the examinations and/or testing were to take place, and determining the scope of the examinations and/or testing.

For example, Mr. Espinosa was instructed by ALLIANCE to travel to ALLIANCE's designated medical facility and obtain annual TB testing and flu shots. Mr. Espinosa followed ALLIANCE's instructions, traveled to the medical facility authorized by ALLIANCE, and underwent the flu shot(s) and TB testing. Mr. Espinosa was required to travel to and from the medical facilities selected by ALLIANCE using his own vehicle. Mr. Espinosa followed ALLIANCE's instructions and drove 5-6 miles roundtrip to and from the medical facilities designated by ALLIANCE, and then spent 1-2 hours waiting at the medical facilities and undergoing the requisite treatment and testing.

However, ALLIANCE did not compensate Mr. Espinosa and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the physical examinations, TB testing, and/or drug testing, including flu shots, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. ALLIANCE's policy and/or practice of not paying for all costs Mr. Espinosa and other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, and/or drug testing violates California Labor Code section 222.5.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, ALLIANCE required Mr. Espinosa and other aggrieved employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. For example, Mr. Espinosa was scheduled for more than seven (7) consecutive days of work from March 11, 2019, to March 21, 2019. Because Mr. Espinosa and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Espinosa and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, ALLIANCE caused Mr. Espinosa and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

ALLIANCE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

First, ALLIANCE failed to pay Mr. Espinosa and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting at home during a scheduled “on-call” shift and awaiting instructions on whether to show up at the hospital, but ultimately were not called. ALLIANCE did not pay Mr. Espinosa and other aggrieved employees for at least half of their scheduled day's work when they were subject to ALLIANCE's on-call policy and were not called or told not to come into the hospital. For example, Mr. Espinosa waited at home during his scheduled “on-call” shift as required by ALLIANCE's on-call policy, but was sometimes not called or told that the hospital did not need him to work. When this occurred, ALLIANCE did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

Second, ALLIANCE had a company-wide practice of sending Mr. Espinosa and other aggrieved employees home early from their shifts, including before they had worked at least half of their

regular shift, but would not pay Mr. Espinosa and other aggrieved employees for half of their scheduled shift. Although Mr. Espinosa and other aggrieved employees would report to work based on the schedule that ALLIANCE provided to them, ALLIANCE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Espinosa and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Espinosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, ALLIANCE had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but ALLIANCE failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Espinosa and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing upcoming work assignments with managers or reviewing healthcare alerts and updates regarding safety warnings and instructions. Mr. Espinosa would spend 10-15 minutes per instance speaking with his managers/supervisors through his personal cell phone. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, ALLIANCE failed to fully reimburse them for this cost.

Second, during the relevant time period, ALLIANCE, on a company-wide basis, required that Mr. Espinosa and other aggrieved employees use their own personal vehicles to carry out company business, such as driving to other work sites, but failed to reimburse them for all of the costs of the their work-related vehicle and travel expenses. For example, Mr. Espinosa periodically drove to other Kaiser facilities in Riverside and San Marcos to work a scheduled shift. However, ALLIANCE only reimbursed a portion of his travel expenses, paying a reduced rate of 51 cents per mile instead of at the IRS Standard Mileage Rate² of 58 cents (2019), 54.5 cents (2018), 53.5 cents (2017), and so forth, or instead of his actual mileage or travel expenses. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to utilize their own vehicles and incur associated costs, ALLIANCE failed to reimburse them fully for these necessary expenses.

Third, ALLIANCE also had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to travel in their own personal vehicles to medical facilities to obtain mandatory physical

² See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed Mar. 17, 2020).

examinations, TB testing, and/or drug testing, including flu shots, but did not reimburse them for their travel expenses, including mileage. For example, Mr. Espinosa followed ALLIANCE's instructions, traveled 5-6 miles roundtrip in his personal vehicle, and underwent ALLIANCE's mandatory flu shots and TB testing, but was not reimbursed for his mileage to and from the medical facilities. Although ALLIANCE required Mr. Espinosa and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo physical examinations, TB testing, and/or drug testing, ALLIANCE never reimbursed them for all their travel expenses.

Fourth, ALLIANCE also had a company-wide policy of requiring Mr. Espinosa and other aggrieved employees to incur the costs of obtaining mandatory flu shots and/or TB tests, but did not fully reimburse them for their resulting co-pays and out of pocket expenses. For example, Mr. Espinosa paid approximately \$60.00 out of pocket to obtain a TB test at CVS in San Diego, California. However, ALLIANCE did not fully reimburse Mr. Espinosa for this work-related expense.

ALLIANCE could have provided Mr. Espinosa and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, to be used for fulfilling work-related tasks, or ALLIANCE could have reimbursed employees for the costs of their cellular phone, mileage, travel expenses, and TB testing and/or flu shot expenses. Instead, ALLIANCE passed these operating costs off onto Mr. Espinosa and other aggrieved employees.

Thus, ALLIANCE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Espinosa and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

ALLIANCE failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). ALLIANCE's failure to provide other aggrieved employees with written notice of basic information regarding their employment with ALLIANCE is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” ALLIANCE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Espinosa’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Espinosa seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Espinosa, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ALLIANCE for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Espinosa seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: ALLIANCE HEALTHCARE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS ALLIANCE HEALTHCARE RADIOLOGY (via U.S. Certified Mail); ALLIANCE ONCOLOGY, LLC (via U.S. Certified Mail)

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **May 26, 2020**, I served the documents described as:

FIRST AMENDED COMPLAINT

on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Alliance Healthcare Services, Inc. c/o CT Corporation System Registered Agent for Alliance Healthcare Services, Inc 818 West 7 th Street, Suite 930 Los Angeles, CA 90017	Alliance Oncology, LLC c/o CT Corporation System Registered Agent for Alliance Oncology, LLC 818 West 7 th Street, Suite 930 Los Angeles, CA 90017
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☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

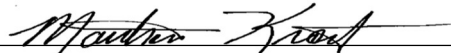
☐ **ELECTRONIC FILE & SERVE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to One Legal Court Services website in accordance with the Court's Order.

☐ **BY PERSONAL SERVICE:** I either caused ProLegal/ProCourier to deliver the documents, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein or I personally delivered the documents enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **26th day of May, 2020** at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature